

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding  
Broadband Infrastructure Deployment and to  
Support Service Providers in the State of  
California.

R.20-09-001  
(Filed September 10, 2020)

**OPEN-ACCESS MIDDLE-MILE INITIAL COMMENTS OF THE UTILITY  
CONSUMERS' ACTION NETWORK (UCAN)**



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Date: September 3, 2021

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**I. INTRODUCTION**

In response to the Assigned Commissioner's ruling,<sup>1</sup> and pursuant to the schedule set forth by the Administrative Law Judge ("ALJ"),<sup>2</sup> the Utility Consumers' Action Network ("UCAN") respectfully submits these initial comments regarding criteria for determining appropriate locations for California's open-access middle-mile network.<sup>3</sup> UCAN supports fully the Commission's laudable endeavor to ensure that public monies are spent prudently, based on a fully informed assessment of California's broadband infrastructure. Open-access middle mile networks, situated in carefully considered locations, will encourage competitive entry and assist the state in achieving ubiquitous, reliable broadband service for all Californians. SB 156, among other things, requires the Commission to "[i]dentify areas with no known middle-mile infrastructure that is open access, with sufficient capacity, and at affordable rates" and also to "[i]dentify priority statewide open-access middle-mile broadband network locations."<sup>4</sup>

The *August 6<sup>th</sup> Ruling* explains further the context for the comments sought: "Pursuant to the recently enacted Senate Bill (SB) 156, this Assigned Commissioner's Ruling opens a public

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<sup>1</sup> Assigned Commissioner's Ruling, August 6, 2021 ("August 6<sup>th</sup> Ruling").

<sup>2</sup> In a ruling dated August 20, 2021, Administrative Law Judge Glegola extended the deadlines for initial and reply comments to September 3, 2021 and September 21, 2021, respectively.

<sup>3</sup> As is explained in the *August 6<sup>th</sup> Ruling* (page 4):

"Middle Mile" refers to the high-capacity fiber-optic cables that traverse long distances (e.g., 10s-100s of miles) to connect communities to the Internet backbone. These high-capacity lines are analogous to transmission lines for electric utilities, or aqueducts and rivers for water utilities. This is in contrast to the "Last Mile," which refers to the wires or cables that connect a house to the nearest utility pole and connect a community to the middle mile. "Open-Access" refers to a network model that allows any entity to access and utilize the infrastructure at a fair market rate and in a non-discriminatory manner.

<sup>4</sup> *August 6<sup>th</sup> Ruling*, at pp. 2-3.

comment process to collect recommendations for the locations for a statewide open-access middle-mile broadband network.”<sup>5</sup> As is explained in the *August 6<sup>th</sup> Ruling* (at page 2):

The lack of available middle-mile broadband infrastructure has been a major issue in connecting California’s unserved and underserved communities. The statewide open-access middle-mile network included in SB 156 will be a foundational investment to ensure every Californian has access to broadband Internet service that meets the connectivity needs of today, and well into the future. Last-mile infrastructure relies on middle-mile to provide service to residents, large and small-businesses, schools, government offices, public safety agencies, and libraries. An open-access middle-mile network can provide the backbone for last-mile providers to serve residences and reduce costs of providing service for businesses and anchor institutions.

UCAN recognizes that Senate Bill 156 requires the CPUC to solicit and receive public comments to inform Staff’s report, and is hopeful that comments submitted in this phase of this proceeding will assist Staff in preparing its report. Also, separately, the Commission is considering broadband pilots proposed by California’s investor-owned utilities (IOUs), and comments on those proposals. San Diego Gas & Electric Company (“SDG&E”) submitted its Phase II-A Pilot Proposal on July 30, 2021, and described two different projects, one in the northeastern part of its service territory on Rincon Tribal Land, with the potential to include additional Tribal communities,<sup>6</sup> and one in the southern part of SDG&E’s territory, also in a few Tribal areas.<sup>7</sup> UCAN notes that SDG&E does not propose to provide the middle-mile infrastructure for either project.

## **II. PRELIMINARY COMMENTS ON ISSUES RAISED IN THE *AUGUST 6<sup>TH</sup> RULING***

UCAN provides preliminary comment on several of the six areas that the *August 6<sup>th</sup> Ruling* identifies,<sup>8</sup> and may supplement its responses to these questions in its reply comments.

1. *Assessment of California’s existing middle mile infrastructure, including its capacity and the affordability of rates for access to such infrastructure. (Comment is also*

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<sup>5</sup> *August 6<sup>th</sup> Ruling*, at p. 1.

<sup>6</sup> San Diego Gas & Electric Company July 30, 2021 filing, at p. 2.

<sup>7</sup> *Id.*, at p. 3.

<sup>8</sup> *August 6<sup>th</sup> Ruling*, at pp. 4-7.

*sought as to how the Commission should verify claims regarding the capacity and affordability of rates.)*

UCAN supports the option raised in the *August 6<sup>th</sup> Ruling* that the Communications Division send a data request for service term sheets, rates, approximate dark fiber, lit fiber, and conduit capacity, etc. Without this information, it would be challenging for the Commission to assess whether rates for access to the existing middle mile infrastructure are affordable. Moreover, stakeholders should be provided an opportunity to comment on the reasonableness and affordability of the rates, terms, and conditions for such access after such information has been submitted. If, in response to such a data request, providers contend that such information is competitively sensitive, the Commission should infer from such claims that middle-mile markets are not competitive - transparency is an essential attribute of a competitive market. Consumers (in this case, those seeking access to the middle mile) need to be adequately informed about key characteristics of the services being purchased (i.e., rates, terms, and conditions) in order to make efficient purchasing decisions. If consumers are not informed, markets cannot operate efficiently and cannot be considered competitive. Therefore, if the owners of existing middle mile infrastructure do not disclose publicly the rates, terms, and conditions of access to their middle-mile infrastructure, it is reasonable to assume that they are setting such rates as monopolists, and therefore, rates likely are neither reasonable, nor affordable, nor sending economically efficient pricing signals to the marketplace.

2. *Possible indicators of the need for middle-mile investment.*

Recognizing that federal funding must be encumbered and spent in a limited time period and also that unserved and underserved areas critically need broadband infrastructure investment, UCAN acknowledges the need for “shorthand” metrics so that the Commission can readily identify those parts of the state that are in greatest need of broadband infrastructure. One indicator of the need for middle-mile investment that is proposed in the *August 6<sup>th</sup> Ruling* is whether more than 50 percent or more of households in a particular county are unserved, i.e., lack the option to subscribe to broadband service at speeds of at least 100 Mbps downstream.<sup>9</sup>

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<sup>9</sup> *August 6<sup>th</sup> Ruling*, at p. 5.

UCAN is concerned, however, about this suggestion. There are two possible drawbacks to relying on this criterion. First, as UCAN has explained and demonstrated in comments previously filed in this proceeding, it is critically important to examine deployment at an area that is sufficiently granular so as to be meaningful,<sup>10</sup> and in this instance, such analysis should occur at a level more granular than at a county-wide level. Although, according to the attachment to the *August 6<sup>th</sup> Ruling*, only 4 percent of San Diego County's households lack access to 100 Mbps,<sup>11</sup> this county-wide average fails to reflect the fact that there are significant (and "investment-worthy") areas of San Diego County that are unserved, including Tribal lands.<sup>12</sup> While it is clear, for example, that the counties of Alpine and Shasta are unserved, as the attachment to the *August 6<sup>th</sup> Ruling* shows (84.5 percent and 100 percent, respectively), there are only 367 unserved households in the former county and 1,380 unserved households in the latter county. In San Diego County, at least 46,511 households are unserved<sup>13</sup> – the small, rural communities in San Diego County are just as much in need of broadband investment as sparsely populated communities in other counties.<sup>14</sup> For example, the poorest community in San Diego County is Boulevard and all of its 63 households are unserved; in Campo, the community with the second highest level of lack of English proficiency in San Diego County, all 590 households are unserved; and in Jacumba, the community with the highest percentage of Native Americans in San Diego County, all 193 households are unserved. Alas, San Diego Gas & Electric has stated unambiguously that it does not propose to provide middle-mile infrastructure as part of its IOU proposal.<sup>15</sup> UCAN's concern remains, in San Diego County, there are pockets of unserved areas even though when viewed on a county-basis, apparently San Diego County is "well-

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<sup>10</sup> UCAN Phase II-B Initial Comments, filed July 2, 2021. See, e.g., id., Appendixes A, B, and D and Tables 1 through 3.

<sup>11</sup> The attachment (at page 2) to the *August 6<sup>th</sup> Ruling* shows the following highway routes in San Diego County; 5, 8, 15, 15S, 52, 54, 56, 67, 75, 76, 78, 79, 94, 125, 163, 188, 282, 805, and also shows that of the 1,159,439 households in San Diego County, 46,511, or 4 percent lack access to broadband services at download speeds of at least 100 Mbps.

<sup>12</sup> UCAN Phase II-B Initial Comments, filed July 2, 2021. See, e.g., id., Appendixes A, B, and D and Tables 1 through 3.

<sup>13</sup> It is well-recognized that Form 477 data overstates availability.

<sup>14</sup> See UCAN Phase II-B Initial Comments; see, id., Tables 1-3).

<sup>15</sup> SDG&E July 30, 2021 Broadband Pilot filing.

served." With only 4% unserved in San Diego County (according to the Attachment) - it seems there would be no middle mile investment in San Diego County. Yet, measured in absolute numbers, investment would seem appropriate in San Diego County (46,511 unserved households represents 6.91% of the total unserved households in CA shown in the Attachment - 673,344 total.) Hence, San Diego County clearly needs middle-mile broadband investment.

Second, simply because middle mile infrastructure may be available, such availability does not mean that access to that infrastructure is *affordable* nor does it mean that the rates, terms, and conditions are reasonable. Where adoption rates are low, affordability may well be a barrier. The deployment of affordable open-access middle-mile infrastructure in San Diego County's poorest communities and communities of color is essential to achieve digital equity (by increasing the probability of affordable monthly broadband rates). Ultimately, the goal is not simply to deploy infrastructure, but rather to increase the ability of households of all incomes and geographies to become digitally connected.

3. *How to assess the affordability of middle mile infrastructure?*

As discussed above, regarding the first issue, full transparency of rates, terms, and conditions of access is essential. UCAN plans to address this issue further in reply comments.

4. *Leasing existing infrastructure.*

No comment at this time.

5. *Interconnection.*

The appropriate points at which the statewide network should interconnect with other networks and services are important determinations, but UCAN has no substantive comment at this time. UCAN, however, does observe that the August 6th Ruling (see p. 4) explains that Attachment A provides a list of the state routes proposed for the statewide open access middle mile network, referred to as the "Anchor Build Fiber Highways." Thus, attached to these UCAN comments are two maps: one depicts the state routes in San Diego County that are identified in Attachment A, and the second map shows the locations of Tribal Lands in San Diego County. UCAN includes these two maps to facilitate future assessments of routes that may serve as appropriate

locations for middle mile investment. As is stated above, SDG&E has proposed pilots in the Rincon Tribal Land as well as in Tribal lands in the southern part of its service territory.

6. *Network Route Capacity.*

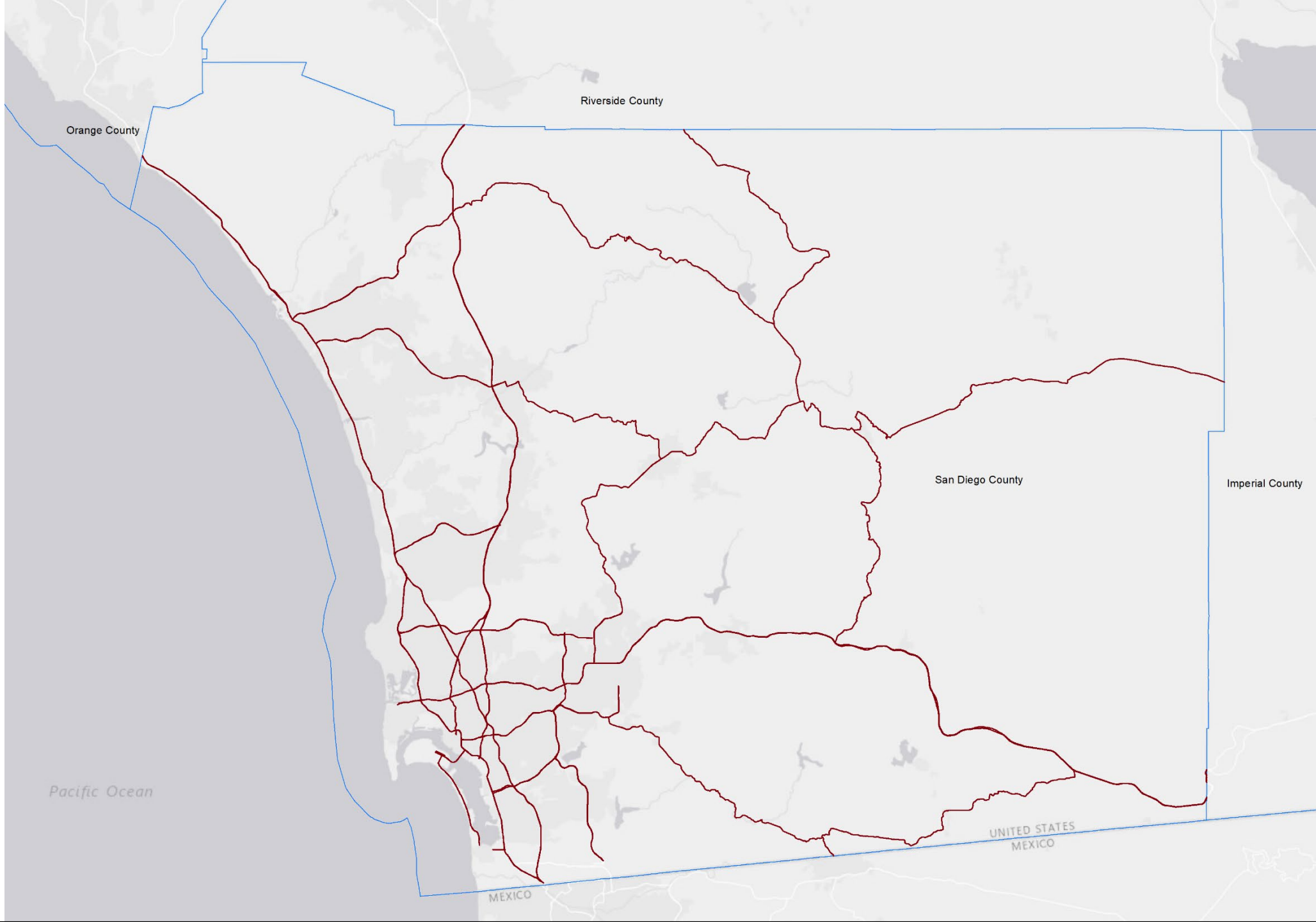
UCAN urges the construction of a middle-mile infrastructure that is future-proof – i.e., that can accommodate future growth in demand without the need to incur significant additional cost. It seems reasonable that capacity should be designed taking into account population density and distance from the core network.

### **III. Conclusion**

UCAN respectfully submits these initial comments regarding California's open-access middle-mile infrastructure.

Dated: September 3, 2021

Respectfully submitted,  
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Orange County

Riverside County

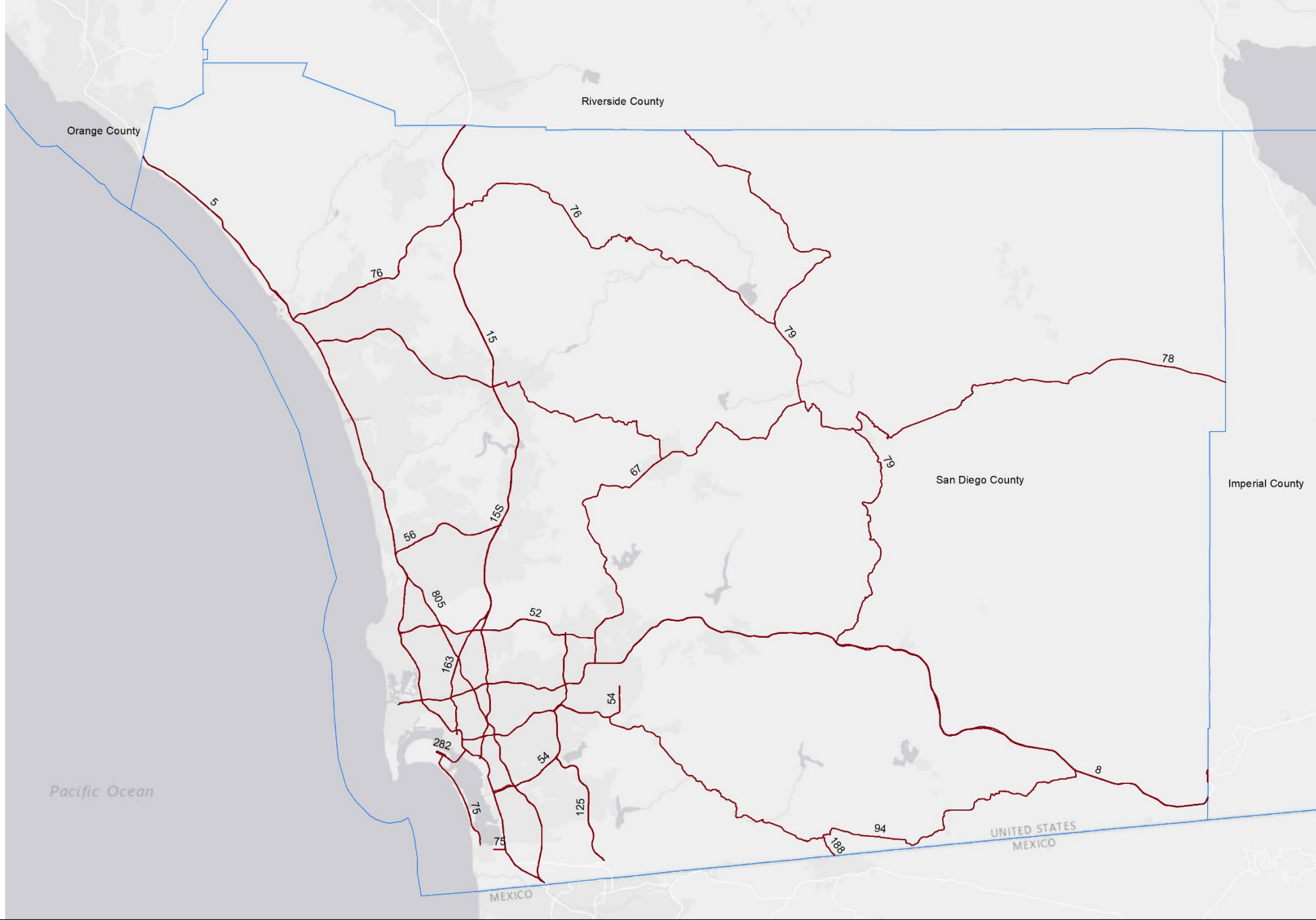
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